

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Competition
for Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition
for Local Exchange Service

Investigation 95-04-044
(Filed April 26, 1995)

**ADMINISTRATIVE LAW JUDGE'S RULING
SETTING SCOPE OF ISSUES REGARDING VIRTUAL NXX CALLS
WITH RESPECT TO SMALL LOCAL EXCHANGE CARRIERS**

This ruling sets the scope of issues to be addressed in this phase of the proceeding relating to the treatment of calls subject to disparate rating and routing points (also known as virtual NXX (VNXX) traffic as they relate to rights and obligations of Small Local Exchange Carriers (SLECs).

These issues are being addressed pursuant to Decision (D.) 03-09-005, in which the Commission:

“acknowledge[d] the concerns raised by the Small LECs regarding the lack of a forum through arbitration proceedings to address Small LECs' interests in connection with disparate rating and routing calls. Unlike parties to interconnection agreements, Small LECs do not have a forum through arbitration proceedings to have their interests addressed. We agree that a generic forum should be provided for the Small LECs to be heard on the issue of compensation for calls subject to disparate rating and routing points, but find it preferable to return this issue to the Local Competition proceeding rather than to address it in this rulemaking. . . . ” (D.03-09-005 at page 8).

Accordingly, this ruling complies with D.03-09-005, identifying the relevant issues and providing for comments. An opening and reply round of written comments are hereby solicited to address the following factual questions as they relate to the issues out lined below.

The scope of issues, as set forth below, is based upon consideration of parties' opening and reply comments filed on January 18 and 28, 2005, respectively, in response to the Administrative Law Judge (ALJ) Ruling, issued on December 30, 2004. Comments were filed jointly by a group of SLECs, as well as by wireless carriers, by Pac-West Telecomm, Inc, (representing CLEC interests), and by the California Association of Competitive Telecommunications Companies (CALTEL). Reply comments were also jointly filed by the Commission's Office of Ratepayer Advocates and The Utility Reform Network.

Although parties filing comments disagree on particular details as to the scope of issues that the Commission may appropriately address in this phase of the proceeding, there is a general consensus on the scope of the majority of issues that are relevant. Upon consideration of parties' arguments, the following policy issues shall be addressed within the scope of this phase of the proceeding.

Policy Issues to be Addressed

This phase of the proceeding shall address the following policy issues:

1. What is the appropriate compensation owed to a SLEC when it transports VNXX traffic on its own facilities? In answering this question, what is the significance of D.99-09-029 in relation to the principle that the carrier which established the VNXX arrangement is obligated to pay the other LECs for their role in transporting VNXX calls to their point of termination?
2. Should a SLEC be required to pay "local" reciprocal compensation or other intercarrier compensation on VNXX

traffic that inevitably terminates outside of the SLEC's local calling area?

3. Independent of policy determinations in reference to Issue 2, should traffic rated and routed to an exchange subject to an extended area service (EAS) arrangement be subject to reciprocal compensation as "local" traffic?
4. How should the interests of the CLEC, and its customers, be weighed in reference to the interests of the SLEC, and its customers, in reference to any treatment that is applied for the exchange of VNXX traffic?
5. Is the SLEC obligated to route traffic to another carrier's NXX code on a local basis if the carrier has established only an "indirect" interconnection (i.e., a tandem interconnection providing the interconnecting carrier with access to all switches subtending the tandem, including SLEC networks)? Alternatively, is the SLEC obligated to route traffic to another carrier's NXX code on a local basis only where the interconnecting carrier has established a direct connection to the SLEC serving territory and assumes all costs of transporting traffic between the calling and called parties?
6. What is the responsibility of the SLEC for compensating transiting providers, that is, third-party carriers through whom VNXX traffic is exchanged beyond the SLEC LEC boundaries?

Factual Questions to be Addressed

As a basis to resolve the above-identified policy issues, answers to the following factual questions are relevant.

1. Is the technical and/or economic situation facing SLECs with respect to the effects of exchanging VNXX traffic materially different than that of the larger ILECs? If so, explain whether or how any such differences provide a basis to treat SLECs differently from ILECs with respect to

- their interconnection rights and obligations applicable to the exchange of VNXX traffic?
2. What are the current physical and financial terms of interconnection between the SLECs and ILECs with respect to VNXX Calls that are originated by SLECs?
 3. What are the current physical and financial terms of interconnection between the SLECs and ILECs with respect to VNXX Calls that are originated by CLECs?
 4. What end user revenues do SLECs receive for various categories of VNXX calls?
 5. What incremental costs do SLECs experience for various categories of VNXX calls?
 6. What external subsidies do SLECs receive for various categories of VNXX calls?
 7. What is the quantity of VNXX calls involving SLECs? How significant is the magnitude of VNXX calls involving SLECs relative to other categories of calls?
 8. Should currently effective tariffs covering reciprocal compensation for VNXX be enforced in the absence of an applicable interconnection agreement? Provide an explanation as to why or why not.

Process for Developing the Record

At this time, no evidentiary hearings will be set to resolve the policy or factual issues set forth above. It is anticipated that parties' written comments will form a sufficient basis for a Commission decision. If, however, as a result of the comments that are filed, parties cannot agree on the admission of underlying factual information required for the Commission to render an informed decision on the issues, the Commission will entertain requests for evidentiary hearings.

Any such request must be narrowly framed, identifying the specific factual issues that would require hearings and the relevance of such facts to resolving the issues as framed above. Any party making a request for evidentiary hearings shall do so by filing a motion no later than ten calendar days after reply comments have been filed.

Parties shall proceed immediately to conduct any discovery deemed necessary in order to answer the questions set forth above. In the event of any party's refusal to produce discovery materials relevant to the issues set forth above, parties are to meet and confer to seek prompt mutual resolution of such discovery disputes. If such meet and confer sessions are unsuccessful, parties should file timely motions in this proceeding compelling production of such materials so that the proceeding is not delayed by discovery problems.

IT IS RULED that:

1. Further proceedings shall be conducted in this proceeding to address the policy issues and factual questions set forth above.
2. Parties shall file set forth their position on each of the identified policy issues, together with supporting justification. As support, parties shall provide responsive comments to each of the factual questions set forth above.
3. Opening comments regarding the policy issues and factual questions shall be due on May 16, 2005 and reply comments shall be due on June 1, 2005.
4. At this time, no evidentiary hearings will be scheduled to resolve the issues set forth above.
5. In the event that parties cannot agree on admission of the relevant factual information required for the Commission to render an informed decision on the issues above, the Commission will entertain requests for evidentiary hearings.

6. Any party making a request for evidentiary hearings shall do so by filing a motion no later than ten calendar days after reply comments have been filed, narrowly framing the scope of any factual issues that would require hearings.

7. Parties shall proceed immediately to conduct any discovery deemed necessary to answer the questions set forth above, and shall follow the procedures outlined above for resolving any discovery disputes.

Dated April 11, 2005, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Setting Scope of Issues Regarding Virtual Nxx Calls with Respect to Small Local Exchange Carriers on all parties of record in this proceeding or their attorneys of record.

Dated April 11, 2005, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.